

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL L. ABRAHAM,

Defendant.

8:12-CR-384

TENTATIVE FINDINGS

I have received the revised presentence investigation report in this case. There were no objections to the revised report. Pending before the Court is defendant's motion for variance. Filing [26](#).

IT IS ORDERED:

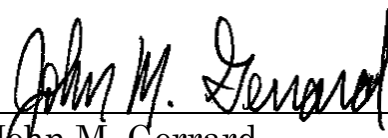
1. The Court will consult and follow the Federal Sentencing Guidelines to the extent permitted and required by [United States v. Booker, 543 U.S. 220 \(2005\)](#), and subsequent cases. In this regard, the Court gives notice that, unless otherwise ordered, it will:
 - (a) give the advisory Guidelines respectful consideration within the context of each individual case and will filter the Guidelines' advice through the [18 U.S.C. § 3553\(a\)](#) factors, but will not afford the Guidelines any particular or "substantial" weight;
 - (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury;
 - (c) impose upon the United States the burden of proof on all Guidelines enhancements;
 - (d) impose upon the defendant the burden of proof on all Guidelines mitigators;
 - (e) depart from the advisory Guidelines, if appropriate, using pre-*Booker* departure theory; and
 - (f) in cases where a departure using pre-*Booker* departure theory is not warranted, deviate or vary from the Guidelines when there is

a principled reason justifying a sentence different than that called for by application of the advisory Guidelines, again without affording the Guidelines any particular or “substantial” weight.

2. The Court will resolve defendant's motion for variance (filing 26) at sentencing. The Court further advises the parties that it is considering whether to grant a downward variance based on the recommendations set forth in the United States Sentencing Commission's recent report to Congress. See *U.S. Sentencing Commission, Report to Congress: Federal Child Pornography Offenses* (Dec. 2012).
3. Except to the extent, if any, that I have sustained an objection, granted a motion, or reserved an issue for later resolution in the preceding paragraph, the parties are notified that my tentative findings are that the presentence report is correct in all respects.
4. If any party wishes to challenge these tentative findings, that party shall, as soon as possible (but in any event no later than three (3) business days before sentencing) file with the Court and serve upon opposing counsel an objection challenging these tentative findings, supported by a brief as to the law and such evidentiary materials as are required, giving due regard to the local rules of practice governing the submission of evidentiary materials. If an evidentiary hearing is requested, such filings should include a statement describing why a hearing is necessary and how long such a hearing would take.
5. Absent timely submission of the information required by the preceding paragraph, the Court's tentative findings may become final and the presentence report may be relied upon by the Court without more.
6. Unless otherwise ordered, any objection challenging these tentative findings shall be resolved at sentencing.

Dated this 22nd day of April, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge